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No. 81-1194

IN THE

Supreme Court of the United States

October Term, 1981

ROBERT KAGARISE, ALBERT E. MOUNTAIN, PAULINE MAY, individuals, individually and on behalf of all other persons similarly situated,

Petitioners,

vs.

CUMBERLAND MARYLAND AREA TEAMSTERS PENSION FUND, an unincorporated association,

Respondent.

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI

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Question Presented for Review

The question presented for review is whether or not the decision of the United States Court of Appeals for the Third Circuit affirming a decision of the United States District Court for the Western District of Pennsylvania which decision determined that the Cumberland Maryland Area Teamsters Pension Fund was not required by the terms of the Reciprocal Agreement for Teamsters Pension Funds to calculate partial pensions with reference to the unit multiplier in effect upon the date of retirement of an applicant was erroneous.

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STATUTE.

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CUMBERLAND MARYLAND AREA TEAMSTERS PENSION FUND, an unincorporated association,

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PETITION FOR CERTIORARI

AND NOW COME the Petitioners, Robert Kagarise, Albert E. Mountain and Pauline May, by their attorneys, Jubelirer, Pass & Intrieri, P.C. and Samuel J. Pasquarelli, Esquire, and petition this Honorable Court for a

Writ of Certiorari directed to the United States Court of Appeals for the Third Circuit and in support thereof they aver the following:

The caption of this case in this Court contains the names of all parties to the proceeding in the Court whose judgment is sought to be reviewed.

The Opinion of the United States Court of Appeals for the Third Circuit is officially reported at 661 F.2d 19 (3rd Cir. 1981) and a copy of the Opinion of said Court is attached hereto and marked Exhibit "A".

Statement of Jurisdictional Grounds

The judgment of the United States Court of Appeals for the Third Circuit sought to be reviewed was entered on the 2nd day of October, 1981, and is dated the 2nd day of October, 1981. No orders are in effect respecting a re-hearing and no orders are in effect granting any extensions of time within which to petition for certiorari. No cross-petition for a writ of certiorari has been filed, and the statutory provision believed to confer on this Court jurisdiction to review the judgment of the United States Court of Appeals for the Third Circuit by writ of certiorari is found at Title 29, United States Code, Section 1001, *et seq.*

There are no constitutional provisions, treaties, statutes, ordinances or regulations which this case involves.

Statement of Facts

The facts material to the consideration of the question presented in this Petition are as follows:

The Cumberland Maryland Area Teamsters Pension Fund, hereinafter called "the Fund" is an unincorporated association which provides pension benefits to individuals for whom contributions have been made to the Fund. In April of 1968 the Cumberland Maryland Area Teamsters Pension Fund signed the Reciprocal Agreement for Teamsters Pension Funds, hereinafter called the "Reciprocal Agreement" which Agreement provided for a method of computation of pensions for persons whose years of service in the trucking industry was divided between or among pension funds who were all signatory to the Reciprocal Agreement. The Reciprocal Agreement provided that the amount of a member's partial pension was to be determined by first determining the amount of the pension to which the employee would be entitled under the terms of the Fund taking into account his combined service credit in all plans that were signatory to the Reciprocal Agreement; the amount of service credit earned with the Fund was then to be divided by the total amount of combined service credit earned by the employee with all funds, and the fraction thus determined was to be multiplied by the pension amount to which an employee would be entitled under the Fund taking into account his combined service credit with all signatory funds and the result was to be the partial pension payable by the Fund.

The Petitioners contended that, whenever an individual retired and was entitled to a partial pension from the Fund pursuant to the Reciprocal Agreement, a fraction, the numerator of which was the number of years of ser-

vice in the Fund and the denominator of which was the number of years of service in all funds signatory to the Reciprocal Agreement was to be multiplied by the pension benefit level in effect in the Fund (called the unit multiplier) on the date of the applicant's application for retirement. In other words, if an individual had service with the Fund from 1955 to 1965, at which time he left the Fund and participated in some other Fund that was also a signatory to the Reciprocal Agreement, and then retired in 1980, the applicant's partial pension from the Fund was to be determined by using the fraction 10/25 and by multiplying that fraction by the pension benefit in effect in the Fund in 1980 for an individual retiring with 25 years service.

The Fund, on the other hand, contended that although it agreed with the use of the fraction, the unit multiplier to be used was to be the unit multiplier in effect when the applicant left the Fund, rather than the unit multiplier in effect on the date of his application for retirement benefits. Pursuant to the foregoing example, the fraction 10/25 would be multiplied by the pension benefit level in effect in 1965 for an individual retiring with 25 years service.

During the course of trial, it was determined that from April 1, 1968, when the Fund signed the Reciprocal Agreement, until June 15, 1969, the Fund's policy was to calculate partial pensions as contended for by the Petitioners, although during this period no applications for partial pensions were received. From June 15, 1969 until July 1, 1972, the policy of the Fund was to calculate partial pensions as contended for by the Fund, but again during this period no applications for partial pensions were received. From July 1, 1972 until July 1, 1978, the

practice of the Fund was to calculate partial pensions as contended for by the Petitioners and numerous applications for partial pensions were received during that period. On July 1, 1978, the Fund determined to revert to the method of calculation now contended for by the Fund, and it has calculated partial pensions in that fashion since that time. At every point in time where the Fund changed its policy with regard to calculation of partial pensions, the same was done at duly convened meetings of the trustees and the changes are reflected in the minutes of the Board of Trustees. The Reciprocal Agreement was not prepared by the Fund, but rather was prepared under the sponsorship of the International Brotherhood of Teamsters. At various seminars held to explain the operation of the Reciprocal Agreement, an example sheet was distributed giving specific examples of calculation of partial pensions. The examples used in this example sheet were done and made with reference to the pension benefit levels in effect in each Fund on the date of an applicant's application for retirement, and not upon the date that the applicant left the Fund.

The matter was tried before the Honorable Donald Ziegler, Judge of the United States District Court for the Western District of Pennsylvania, sitting without a jury. The district court determined that there was nothing in either the Reciprocal Agreement or the law that forbade the Fund from changing the method of calculating its pension benefits. The district court found that it was necessary for the Fund to make a change in the determination of partial pension calculations because of serious financial problems that the Fund was faced with at the time, and the lower court found that the Fund's determination to change its method of calculating partial

pensions was not arbitrary, was not capricious and was not unreasonable and was in fact necessary to preserve the Fund from financial disaster.

The decision of the district court was appealed to the United States Court of Appeals for the Third Circuit and the basis of the appeal was that the determination of the district court was clearly erroneous, since there was ambiguity in the terms of the Reciprocal Agreement, and since the only evidence introduced to explain the ambiguity was introduced by the Petitioners. The evidence so introduced by the Petitioners consisted of minutes of the Board of Trustees of the Fund indicating that when the Reciprocal Agreement was adopted in April of 1968, the policy of the Fund was to calculate partial pensions as contended for by the Petitioners, and further, the Petitioners introduced the example sheet referred to above and elicited testimony from Frank Stokes, the Fund's actuary, indicating that the examples shown on the example sheet were examples of partial pensions calculated as contended for by the Petitioners. Upon this basis, the Petitioners contended before the United States Court of Appeals for the Third Circuit that the lower court was clearly in error in its decision and did not consider the foregoing evidence. The United States Court of Appeals for the Third Circuit affirmed the decision of the United States District Court for the Western District of Pennsylvania.

The basis for federal jurisdiction in the United States District Court for the Western District of Pennsylvania, was based upon the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.A. §1001, *et seq.*

Argument

It is contended that this Honorable Court should issue a writ of certiorari to the United States Court of Appeals for the Third Circuit to review its decision in this case because the matter involves an important question of federal law which has not been settled by any court, to the knowledge of the Petitioners. The Reciprocal Agreement covers many thousands of individuals working in the trucking industry, and governs the calculation of partial pensions from many pension funds. The proper construction of the Reciprocal Agreement is necessary to prevent abuse of the partial pension system contained therein, and to assure that individuals, when retiring, are accorded the proper partial pension benefit level due to them pursuant to the Reciprocal Agreement. In addition thereto, it is the Petitioners' position that the United States District Court for the Western District of Pennsylvania ignored unrebutted and uncontradicted evidence presented to it to enable it to construe the meaning of the terms of the Reciprocal Agreement. While the terms of the Reciprocal Agreement might, at first examination, appear to be such that they might be interpreted as contended for by either of the parties hereto, the only evidence introduced to the Court to enable it to make a determination of the procedure to be used thereunder was evidence introduced by the Petitioners indicating that, when the Reciprocal Agreement was first adopted by the Fund, the Fund adopted it with the understanding that partial pensions were to be determined as opted for by the Petitioners. It is submitted that the Fund would not have adopted this as its policy had it not been under the impression that the Reciprocal Agreement did in fact require the use of such a policy. Sec-

ondly, whenever the Reciprocal Agreement was adopted, seminars were held to explain its operation and at these seminars, example sheets were distributed to illustrate methods of computation under the Reciprocal Agreement. It was admitted by witnesses for the Fund at trial that the figures used in the examples shown on this example sheet were figures representing the pension benefit levels in effect when individuals actually retired, and did not represent pension benefit levels in effect when individuals left their respective Funds. It is submitted that the use of an example sheet like this, coupled with the fact that the Fund's policy when it signed the Reciprocal Agreement, was to calculate partial pensions as opted for by the Petitioners was strong and compelling evidence of the manner in which the Reciprocal Agreement was intended to operate, and the district court's failure to consider this evidence as controlling, as well as the United States Court of Appeals for the Third Circuit affirmance thereof was improper. As a result, the decision of the United States Court of Appeals for the Third Circuit will, unless reversed by this Court, constitute the basis upon which all partial pensions will be calculated, not only from the Fund, but from any other Funds that are signatory to the Reciprocal Agreement. For these reasons, it is contended that the decision of the United States Court of Appeals for the Third Circuit should be reviewed.

WHEREFORE, the Petitioners respectfully request your Honorable Court to issue a Writ of Certiorari directed to the United States Court of Appeals for the Third Circuit to review the decision of said Court in the instant case.

Respectfully submitted,

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APPENDIX

EXHIBIT A

Opinion of the United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS

For the Third Circuit

No. 81-1382

ROBERT KAGARISE, ALBERT E. MOUNTAIN, PAULINE MAY, Individually and on behalf of all other persons similarly situated,

Appellants,

v.

CUMBERLAND, MARYLAND AREA TEAMSTERS PENSION FUND, an unincorporated association.

(D.C. Civil No. 79-1037)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued: September 18, 1981

Before: GIBBONS and HUNTER, *Circuit Judges* and STERN, *District Judge**

(Opinion filed October 2, 1981)

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* Hon. Herbert J. Stern, United States District Judge for the District of New Jersey, sitting by designation.

Appendix—Exhibit A—Opinion of the United States Court of Appeals for the Third Circuit.

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Appendix—Exhibit A—Opinion of the United States Court of Appeals for the Third Circuit.

OPINION OF THE COURT

GIBBONS, *Circuit Judge:*

Robert Kagarise, Albert E. Mountain and Pauline May, claimants, respectively, for a disability pension, a retirement pension and a survivors benefit pension, appeal from a judgment in favor of Cumberland, Maryland Area Teamsters Pension Fund (the Fund) in their suit which challenged the method of calculating benefits.[1] We affirm.

The Fund is a qualified pension trust organized and administered under Section 302 of the Labor Management Relations Act of 1947. 28 U.S.C. §186. It provides benefits for eligible participants and beneficiaries from funds obtained by contributions agreed upon as a result of collective bargaining. The level of benefits is determined by a formula depending in part upon length of service during which contributions have been received. If an eligible participant has worked for only one employer, or for employers contributing to one pension fund, the calculation of service credit will ordinarily be made as of the date of termination of employment by employers contributing to that fund. Because Teamster Union members sometimes change location, that might result in

[1] The district court has jurisdiction over civil actions to recover benefits due under the terms of a plan covered by the Employees Retirement Income Security Act of 1974, 29 U.S.C. §1132(a)(1)(B). Plaintiffs originally sought to maintain the action as a class action, but the parties agreed, prior to trial, that the Fund would recalculate benefits for all affected participants in accordance with the judgment in their individual suit. Thus the action disposed of their individual claims only.

ineligibility for benefits because of insufficient years of service. To meet this problem a number of Teamster pension funds have entered into the Reciprocal Agreement for Teamster Pension Funds. The Reciprocal Agreement provides that when contributions have been made to two or more funds for the account of an employee each fund will provide a partial benefit payment. This suit involves the method of calculation of the partial benefits to be paid by the Fund to participants or beneficiaries under the Reciprocal Agreement.

The Reciprocal Agreement requires that each participating Fund amend its plan to provide for payment of partial benefits as follows:

> (a) The amount of the pension to which the employee would be entitled under this Plan taking into account his Combined Service Credit shall be determined, then
>
> (b) The amount of service credit earned with this plan since January 1, 1955, shall be divided by the total amount of Combined Service Credit earned by the employee since January 1, 1955, then
>
> (c) The fraction so determined in (b) shall be multiplied by the pension amount determined in (a) and the result shall be the Partial Pension Amount payable by this Plan.

Under this formula each Fund to which contributions have been made is charged with service credit for the period of time that contributions were made to it for the account of a participant. The dispute centers on the calculation of the amount of the benefit (unit multiplier)

by which the proportionate share of service credit is multiplied. Shortly after the Fund became a participant in the Reciprocal Agreement it announced that in determining partial payments it would use the level of benefits to which the participant would be entitled at the date of his retirement, rather than at the date he ceased to be a participant. Since contributions and benefits were in an inflationary economy increasing, the result of this method of calculation was that the Fund would pay benefits disproportionate to contributions received in those cases where the employee ceased to be a participant prior to his retirement. In 1978 the Fund trustees, on the advice of their actuary, adopted a change in the method of calculation, using as the unit multiplier the level of benefits in effect on the date of termination of participation. The complaint requests that the trustees be ordered to rescind this action and to recalculate benefits using as the unit multiplier the benefits in effect at the date of retirement.

The claimants contend that the Reciprocal Agreement mandates the calculation which they urge. They argue that the words "the amount of the pension to which the employee would be entitled under this Plan taking into account credited service" can only be construed to require use of a unit multiplier determined at the time total combined service credit is known. The trial court rejected this construction, ruling that

> [s]ection 8(a) states only that the amount of the partial pension benefits "shall be determined" by taking into account the amount of the individual's combined service credit. It does not state whether the

> partial pension benefit shall be determined at the time of retirement an application is made or at the time of an individual leaves the Cumberland Fund.

We agree that the language relied upon does not determine the disputed issue.

Plaintiffs next argue that even if the wording is ambiguous, there is strong extrinsic evidence that the Reciprocal Agreement means the unit multiplier to be determined as of the date of retirement. They introduced two documents which were evidently prepared and distributed by the major draftsman of the Reciprocal Agreement shortly after it was drafted to aid in explaining it. The documents are entitled "Key Points of 'Reciprocal Agreement for Teamsters Pension Funds' " and "Example of Partial Pensions."

The "Example" page, while not indicating how the unit multiplier is to be determined, apparently does employ figures from actual pension funds that represent the level of benefits at the date of retirement. Plaintiffs argue that this evidence confirms their interpretation of the words of the Reciprocal Agreement.

The district court concluded

> that although the calculation sheets may have been stapled to the Reciprocal Agreement in some cases, they were never intended to be part of that agreement. They represented a somewhat informal attempt to summarize the key points of the Reciprocal Agreement as well as some examples as to the method of calculation of partial pension benefits.

> More significantly, we conclude that the calculation sheets marked as Plaintiff's Exhibit 9 do not indicate that any particular unit multiplier must be employed by a signatory fund.

The court also noted that on the "Key Points" page it is explained that "Each Fund calculates—on its own—the benefit the employee would have received in accordance with its own rules and benefit formulas *if* all the combined credited service had been with its Fund." The court concluded that this indicated "that the method of calculation is established according to the rules and benefit formulae of each particular Fund."

We cannot fault the district court's conclusions with respect to these accompanying explanatory pages. The court had ample support for those conclusions in the testimony of Frank Stokes, an actuary consulted by the Fund since 1968, that the sheets were not a part of the Reciprocal Agreement and did not, in any event, indicate a single method for determining the unit multiplier. They had a mainly explanatory function and are susceptible of the same interpretation concerning the unit multiplier as the court's interpretation of the words of Section 8.

Plaintiffs' final argument as to the meaning of the Reciprocal Agreement is based upon the Fund's own practice. On June 16, 1969, about fourteen months after the date the Fund became signatory to the Reciprocal Agreement, its Secretary-Treasurer "raised for discussion the need for an amendment that will provide a partial pension for members (under a Reciprocal Agreement) who transfer out of the Cumberland Plan in such amount

as was provided by the Cumberland Plan at the time the members transferred to another Plan. ... [I]t was unanimously resolved that the consultants be instructed to prepare such amendment. ..." Minutes of Annual Meeting of Trustees of the Fund.

Plaintiffs urge that this proposal concerned an amendment to the Reciprocal Agreement, not an amendment to the Plan itself. Insofar as this is the case, it would appear that such an amendment was necessary only if the Reciprocal Agreement had initially mandated a different means of calculating the unit multiplier.

The Fund's explanation for this proposal was that the trustees' action was merely meant to amend the Plan to insure that the provisions of Exhibit A of the Reciprocal Agreement were incorporated. The record contains no explanation for the fact that the Reciprocal Agreement itself states, "WHEREAS, the Trustees of each signatory Fund have each adopted an amendment to their Pension Plan governing eligibility for and payment of Partial Pensions, in the form annexed hereto as Exhibit A; ..." The only explanation suggested by the record for the fourteen month delay in thus amending the Plan is that in a June 15, 1968 meeting of the trustees it was agreed to have an actuarial consultant investigate the validity of the Reciprocal Agreement. Trial testimony of Chappell.

In any event, the district court found that there were no applications for partial benefits processed under the Reciprocal Agreement prior to 1972. Given this lack of evidence of defendant's practice, the court attached no significance to the proposed 1969 amendment.

Plaintiffs also urge that even if the Fund's present construction of the Reciprocal Agreement is consistent with its terms the trustees' action in changing the method of calculation was so arbitrary and capricious an application of the pension plan rules as to amount to a structural defect in the plan in violation of Section 302(c)(5) of the National Labor Relations Act. 29 U.S.C. §186(c)(5) (1976). This contention is without merit. The decision to adopt the present method of calculating benefits did not result in discrimination among participants, deprived the plaintiffs of no earned service credits, and was actuarially justified.

The judgment appealed from will be affirmed.

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Clerk of the United States Court of Appeals for the Third Circuit

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Question Presented for Review

Whether the United States Court of Appeals for the Third Circuit committed error by affirming the order of the United States District Court for the Western District of Pennsylvania permitting the Cumberland, Maryland Area Teamsters Pension Fund to calculate partial pensions under the terms of the Reciprocal Agreement for Teamsters Pension Funds with reference to the unit multiplier in effect on the date of a participant's termination of participation with the Fund.*

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* The caption of this case in this Court contains the names of all parties to the proceeding in this Court whose judgment is sought to be reviewed.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent, Cumberland, Maryland Area Teamsters Pension Fund, prays that the Petition for Certiorari filed by the Petitioners, requesting the review of the order of the United States Court of Appeals for the Third Circuit, filed on October 2, 1981 in the proceeding styled *Robert Kagarise, et al. v. Cumberland, Maryland Area Teamsters Pension Fund,* Docket No. 81-1382, be denied in its entirety.

Decision Below

A panel of the United States Court of Appeals for the Third Circuit filed an opinion and order on October 2, 1981 in *Robert Kagarise, et al. v. Cumberland, Maryland Area Teamsters Pension Fund*, Docket No. 81-1382, affirming the judgment of the United States District Court for the Western District of Pennsylvania entered on January 27, 1981 at Civil Action No. 79-1037. The opinion and order of the Court of Appeals affirming the judgment of the District Court is attached to the Petition as Exhibit A and is reported at 661 F.2d 19 (3rd Cir. 1981). The judgment of the District Court is attached hereto this Brief as Exhibit A.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Statement of Facts

The Cumberland, Maryland Area Teamsters Pension Fund ("the Fund") is a qualified pension trust, which was organized under, and is jointly trusteed by an equal number of representatives of employers and employees pursuant to Section 302 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C.A. §186. The Fund Trustees administer the pension trust for the purpose of providing such retirement benefits as are authorized and permitted by law for eligible participants and beneficiaries, pursuant to a schedule of benefits determined from the level of employer contributions agreed upon as a result of collective bargaining negotiations between employer and employee representatives.

The Fund provides retirement benefits to a participant pursuant to the provisions of its Agreement and Declaration of Trust and Pension Plan, as amended. Article X of

the Pension Plan provides partial pensions for eligible participants who would otherwise lack sufficient service credit to be eligible for any pension benefits from the Fund because their years of employment were divided between two or more Teamsters pension funds. Such partial pensions are provided in conjunction with other Teamsters pension funds pursuant to the provisions of the Reciprocal Agreement for Teamsters Pension Funds ("Reciprocal Agreement"). Effective April 1, 1968, the Fund became a signatory to the Reciprocal Agreement.

Under the terms of the Reciprocal Agreement, the various signatory pension funds agreed to a procedure whereby a participant who would otherwise lack sufficient service credit to be eligible for any pension benefits from a particular pension fund because his years of employment were divided between two or more signatory Teamsters pension funds, could receive pension benefits by combining the service credit earned with each of the signatory Teamsters pension funds. The Reciprocal Agreement further provided that a participant's reciprocal pension benefits (referred to throughout this Brief as "partial pension" benefits) are to be paid by each signatory pension fund on a pro rata basis.[1] The procedures for determining the amount of reciprocal benefits are stated in Exhibit A, Section 8 to the Reciprocal Agreement as follows:

> (a) The amount of the pension to which the employee would be entitled under this Plan taking into account his Combined Service Credit shall be determined, then
>
> (b) The amount of service credit earned with this Plan since January 1, 1955, shall be divided by the total amount of Combined Service Credit earned by the employee since January 1, 1955, then

[1] For example, if a participant has 20 years of service credit, five of which were with Fund A and 15 were with Fund B, the participant's pension benefit calculation would be based on 20 years of service credit, of which Fund A would pay 5/20th of the benefit and Fund B would pay 15/20th of the benefit.

> (c) The fraction so determined in (b) shall be multiplied by the pension amount determined in (a) and the result shall be the Partial Pension amount payable by this Plan.

Subsequent to entering into the Reciprocal Agreement, the Fund Pension Plan was amended to add "Article X-Partial Pensions", which is identical in wording to Exhibit A of the Reciprocal Agreement.

The Fund computes its pro rata share of a participant's partial pension by reference to the years of service credit earned by a participant and the appropriate unit multiplier.[2] From the effective date of the adoption of the Reciprocal Agreement by the Fund until June, 1972, partial pension benefits paid by the Fund were determined by the application of the unit multiplier in effect upon the date of the participant's termination of participation with the Fund.

In June, 1972, the Fund changed the method of computing partial pensions by amending its Pension Plan to require the use of the unit multiplier in effect at the time the participant actually retired (*i.e.*, filed an application for partial pension benefits).

The method of calculation of partial pensions was again changed by the Fund effective July 1, 1978 by reverting to the use of the unit multiplier in effect upon the date of the participant's termination of participation with the Fund. After careful consideration, the Fund Trustees adopted this change in calculation of partial

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[2] A "unit multiplier" is the term denoting the pension benefit level a pension fund participant earns per each year of service credit. For example, if the unit multiplier in effect on the date of the participant's termination of participation with the pension fund is $10.00, and the participant has earned 20 years of service credit, the participant would receive a pension of $200.00 per month ($10.00 x 20 years of service credit = $200.00 per month).

pensions because of the weak financial condition of the Fund and at the recommendation of the Fund Actuary. This change was reflected in Amendment No. 4 to the Pension Plan, effective October 1, 1978. Generally, this change resulted in lower partial pensions for participants retiring after July 1, 1978.

The Petitioners initiated the proceeding in the United States District Court for the Western District of Pennsylvania on July 30, 1979 alleging that the Fund, by changing the method of computing partial pensions effective July 1, 1978, violated the provisions of the Reciprocal Agreement. The Petitioners further contended before the District Court that the provisions of the Reciprocal Agreement mandated the Fund to utilize the unit multiplier in effect at the time a participant retires when computing partial pensions. The Petitioners requested that the Fund Trustees be ordered to rescind their action, and that all Fund partial pensions be calculated based on the unit multiplier in effect when the participant retires.

In answer to the Petitioners' allegations, the Fund stated that the manner of calculation of partial pensions by the Fund is governed by the Trustees' administrative decisions. The Fund also stated that the Reciprocal Agreement does not contain any provision concerning the calculation by a signatory pension fund of the amount of a partial pension paid to an eligible participant, and the actual method of calculating a partial pension is determined by the Trustees of each signatory pension fund. Thus, the Reciprocal Agreement and the Pension Plan did not prohibit the Fund Trustees from changing the method of calculation of partial pensions paid by the Fund.

A non-jury trial was held before the District Court on January 21, 1981. At the trial, the Petitioners presented one witness, and the Fund presented three witnesses, including the Fund Actuary (Frank Stokes). At the conclusion of the trial, the District Court concluded that the Fund, in changing the method of calculation of partial pensions, effective July 1, 1978, did not violate its Pension Plan, the Reciprocal Agreement or federal law. An order was entered on January 27, 1981 entering judgment on behalf of the Fund. (*See*, Exhibit A to Brief).

The basis for federal jurisdiction in the District Court was based upon the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.A. §1001, *et seq.*

Subsequently, the Petitioners filed an appeal with the United States Court of Appeals for the Third Circuit. Following oral argument, the Court of Appeals filed an opinion and order on October 2, 1981 affirming the judgment of the District Court. (*See* Exhibit A to Petition).

Reasons for Denying Petition

The Court of Appeals committed no error in affirming the District Court's order permitting the Fund to calculate partial pensions under the provisions of the Reciprocal Agreement with reference to the unit multiplier in effect on the date of a participant's termination with the Fund. After a non-jury trial, the District Court found the testimony of the Fund's witnesses to be creditable and uncontradicted, and properly concluded that the Fund, in changing the method of calculation of partial pensions, effective July 1, 1978, did not violate its Pension Plan, the Reciprocal Agreement or federal law. The Court of Appeals, in turn, properly found that the District Court's findings of fact and conclusions of law were not erroneous.

This case does not involve any important questions of federal law, but rather merely involves the interpretation of certain language contained in the Reciprocal Agreement. The only issues in this case were factual issues, which were properly resolved in favor of the Fund by the District Court after a full and complete trial.

ARGUMENT

The decision of the Court of Appeals is correct and further review is not warranted.

As will be discussed in detail below, the only issues raised in the Petition relate to issues of fact as found at trial by the District Court and affirmed by the Court of Appeals. The Petition raises no issues of law and alleges no violation by the Fund of any statute.

The District Court at trial reviewed the testimony of the three witnesses presented by the Fund, and found their testimony to be creditable and uncontradicted by the testimony of the Petitioners' one witness. At the conclusion of the trial, the District Court made full and complete findings of fact and conclusions of law (*see* Exhibit A to Brief), and properly concluded that the Fund, in changing the method of calculation of partial pensions, did not violate the Fund's Pension Plan, the Reciprocal Agreement or federal law. The Court of Appeals, after making its own review of the record and its own findings, also concluded that the Fund's action was proper.

In this Petition the Petitioners are now assailing the factual determinations made by the District Court at trial and affirmed by the Court of Appeals. Rule 52(a) of the Federal Rules of Civil Procedure provides that "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the

witness." The Petitioners could not demonstrate to the Court of Appeals that the District Court's decision was "clearly erroneous." As is demonstrated below, each of the findings assailed by the Petitioners were fully supported by the evidence of record. Thus, this Court should not now retry the issues of fact that were before the District Court, and affirmed by the Court of Appeals, and this Court should dismiss the Petition in its entirety. *United States v. Yellow Cab Co.*, 338 U.S. 338, 341-342, 70 S. Ct. 177, 179 (1949); *United States v. United States Gypsum Co.*, 333 U.S. 364, 394-395, 68 S. Ct. 525, 541-542 (1948).

1. The Petitioners contend that the Court of Appeals was in error in finding that the Reciprocal Agreement was silent as to which form of unit multiplier was to be utilized by a signatory pension fund in calculating partial pensions. The District Court specifically found that Section 8 of the Reciprocal Agreement did not contain any language which prescribed the unit multiplier a signatory fund must employ in calculating partial pension benefits.

> . . . Section 8(a) states only that the amount of the partial pension benefits "shall be determined" by taking into account the individual's combined service credit. It does not state whether the partial pension benefit shall be determined at the time of retirement and application is made or at the time an individual leaves the Cumberland Fund . . . . (Exhibit A to Brief, p. 7a).

The Court of Appeals agreed with the District Court's finding. (Exhibit A to Petition, pp. 14-15).

The Court of Appeals' finding was fully supported by uncontradicted evidence of record. A reading of the Reciprocal Agreement, including Section 8(a), fails to reveal any provision mandating a method of calculation for partial pensions by any of the signatory funds. In such a situation, where the terms of the contract are

clear and unequivocal, the intent of the parties is determined from the contract alone. *Plymouth Mutual Life Insurance Co. v. Illinois Mid-Cont. Insurance Co.*, 378 F.2d 389, 391 (3rd Cir. 1967). Since the Reciprocal Agreement was silent as to the use of a particular unit multiplier, and no evidence was submitted by the Petitioners at trial indicating that such a provision existed, the absence of such a provision in the Reciprocal Agreement was evidence of the parties' intent to exclude such a provision. *Domeyer v. O'Connell*, 364 Ill. 467, 4 N.E.2d 830, 832 (1936).

The Petitioners' contention that Section 8(a) was ambiguous and subject to a different meaning than that reached by the Fund is also without merit. A contract is ambiguous only if it is reasonably or fairly susceptible of different constructions, and it is not ambiguous simply because an individual or individuals do not agree on the proper construction of the terms of the contract. *Southern Construction Co. v. United States*, 364 F.2d 439, 453 (Ct. Cl. 1966). In this instance, Mr. Stokes, the Fund Actuary, testified that the Fund's Pension Plan, and not the Reciprocal Agreement, was the only document referred to for the specific calculation of partial pensions. Mr. Stokes further testified that the unit multiplier utilized by the Fund to compute partial pensions was stated in the Fund's Pension Plan and not in the Reciprocal Agreement. The Petitioners submitted no evidence at trial to either refute Mr. Stokes' testimony in this regard or demonstrate that Section 8(a) of Exhibit A to the Reciprocal Agreement was interpreted any differently by other signatory pension funds.

2. The Petitioners contend that the Court of Appeals was in error in not finding that two example pages attached to the Reciprocal Agreement required the Fund to utilize the unit multiplier in effect on the date of re-

tirement to calculate partial pensions. The first of these pages is entitled "Key Points Of 'Reciprocal Agreement For Teamsters Pension Funds' "; the second page details hypothetical reciprocal pensions paid by the Central States Fund and the New England States Fund. After reviewing the uncontradicted evidence of the Fund, the District Court concluded that the subject two sheets "were never intended to be part of" the Reciprocal Agreement and did "not indicate that any particular unit multiplier must be employed by a signatory Fund." (Exhibit A to Brief, p. 8a). The Court of Appeals agreed with the District Court's conclusions by stating that

> [W]e cannot fault the district court's conclusions with respect to these accompanying explanatory pages. The court had ample support for those conclusions in the testimony of Frank Stokes, an actuary consulted by the Fund since 1968, that the sheets were not a part of the Reciprocal Agreement and did not, in any event, indicate a single method for determining the unit multiplier. They had a mainly explanatory function and are susceptible of the same interpretation concerning the unit multiplier as the Court's interpretation of the words of Section 8. (Exhibit A to Petition, p. 16).

The Court of Appeals' finding was fully supported by uncontradicted evidence of record. At trial, Mr. Stokes testified that the subject two pages were distributed at a seminar meeting held to explain the key points of the Reciprocal Agreement. This seminar was held after the Reciprocal Agreement went into effect, and, prior to the seminar, the subject two pages were not attached to the Reciprocal Agreement. Mr. Stokes further testified that in calculating partial pensions for Fund participants, absolutely no reference was made to the two pages and, in his opinion, the two pages were not a part of the Reciprocal Agreement. In regard to the second of the two pages, which detailed hypothetical reciprocal pen-

sions paid by two signatory funds, Mr. Stokes testified that those calculations did not indicate any particular unit multiplier that must be utilized under the Reciprocal Agreement, and, in fact, it would not be possible to ascertain from the sample calculations what benefit level was utilized unless the reader was intimately familiar with the benefit schedules of the two sample funds. Thus, in light of the uncontradicted evidence of Mr. Stokes, the Court of Appeals properly affirmed the District Court's finding that the subject two pages were not intended to be a part of the Reciprocal Agreement and were not relevant to any interpretation of the Reciprocal Agreement.

It should also be noted that even if the subject two pages were considered to be a part of the Reciprocal Agreement, the two pages do not indicate that any particular unit multiplier must be employed by a signatory fund. Paragraph (4) of the "Key Points" contained on page one of the two subject pages specifically provides that

> [e]ach Fund calculates—on its own—the benefit the employee would have received in accordance with its own rules and benefit formulas if all the combined credited service had been with its Fund.

In regard to this paragraph, Mr. Stokes testified that it served to explain that, under the provisions of the Reciprocal Agreement, each signatory fund was to calculate its pro rata share of a partial pension by reference to its own plan documents. The Petitioners submitted no contradictory testimony on this point. Thus, the Court of Appeals did not commit error in finding that the subject two pages "did not . . . indicate a single method for determining the unit multipliers." (Exhibit A to Petition, p. 16).

3. The Petitioners contend that the Fund Trustees' action at a meeting held June 16, 1969, 14 months after the Reciprocal Agreement was signed, indicated that the Trustees felt an amendment was necessary to the Pension Plan because the Reciprocal Agreement originally required that partial pensions be calculated with reference to the unit multiplier in effect when the applicant retires. The evidence of record simply does not support this contention.

The Reciprocal Agreement was signed by the Fund Trustees effective April 1, 1968. At the Trustees' meeting on June 16, 1969, the Trustees instructed the Fund's consultants to prepare an amendment to the Fund Pension Plan to provide that a participant's partial pension be calculated with reference to the unit multiplier in effect at the time the participant terminated participation with the Fund. At trial, Mr. Stokes explained that the amendment ordered prepared by the Trustees was necessary for the Cumberland Fund to properly adopt the Reciprocal Agreement. The resultant amendment to the Fund Pension Plan was Article X, which was identical to the wording of Exhibit A to the Reciprocal Agreement. Moreover, Mr. Stokes testified that if an application for partial pension had been filed anytime between April 1, 1968 and June 2, 1972, it would have been calculated with reference to the unit multiplier in effect at the date of last coverage under the Fund. As recognized by the Court of Appeals, these actions certainly did not constitute an admission by the Fund Trustees that the Reciprocal Agreement required, when originally effective, the use of the unit multiplier in effect at the date of a participant's retirement. (Exhibit A to Petition, p. 17).

4. The Petitioners' assertion that the Court of Appeals' decision will constitute the basis upon which all partial pensions will be calculated by the funds signatory

to the Reciprocal Agreement is in direct conflict to the evidence of record. Mr. A. Donald Chappell, a pension consultant who appeared at trial on behalf of the Fund, testified that a poll taken at a meeting in October, 1980 of 73 funds signatory to the Reciprocal Agreement indicated that 40 of those pension funds utilized the unit multiplier in effect at the date the participant retired. Mr. Chappell further testified that the poll took place as a result of a recent proposal by certain signatory pension funds that a new Reciprocal Agreement contain a provision that all signatory pension funds calculate partial pensions on the basis of the unit multiplier in effect upon the date of a participant's retirement. There was no evidence submitted by the Petitioners at trial which demonstrated in any manner that the 40 funds which utilize the unit multiplier in effect at the date a participant retires to calculate partial pensions will be affected by the Court of Appeals' decision. The Court of Appeals' decision does not purport to apply to the unit multiplier utilized by the signatory funds, and, in fact, makes clear that the choice of the unit multiplier in calculating partial pensions is clearly an administrative decision of the individual signatory fund.

5. The District Court found that the Fund Trustees' action in changing the unit multiplier used for calculation of partial pensions was based solely on the desire of the Trustees to insure the financial integrity of the Fund. The District Court also found that the Trustees' action breached no fiduciary duties. *See* Section 404(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.A. §1104(a)(1). In this regard, the Court of Appeals stated that

> Plaintiffs also urge that even if the Fund's present construction of the Reciprocal Agreement is consistent with its terms the trustees' action in changing the method of calculation was so arbitrary and

> capricious an application of the pension plan rules as to amount to a structural defect in the plan in violation of Section 302(c)(5) of the National Labor Relations Act. 29 U.S.C. §186(c)(5) (1976). This contention is without merit. The decision to adopt the present method of calculating benefits did not result in discrimination among participants, deprived the plaintiffs of no earned service credits, and was actuarially justified. (Exhibit A to Petition, p. 18).

In the Petition the Petitioners do not allege that the actions of the Fund Trustees are violative of the pertinent provisions of the Employee Retirement Income Security Act of 1974, as amended, or the National Labor Relations Act, as amended.

Conclusion

For the foregoing reasons it is respectfully submitted that this Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX

EXHIBIT A

Findings of Fact, Conclusions of Law and Order of United States District Court for the Western District of Pennsylvania

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IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT KAGARISE, ALBERT E. MOUNTAIN and PAULINE MAY, individuals, individually and on behalf of all other persons similarly situated,

Plaintiffs,

vs.

CUMBERLAND, MARYLAND AREA TEAMSTERS PENSION FUND,
an unincorporated association,

Defendant.

Civil Action No. 79-1037.

Excerpt of transcript of Non-Jury Trial on January 27, 1981, United States District Court, Pittsburgh, Pennsylvania, before Honorable Donald E. Ziegler, District Judge.

* * *

Appendix—Exhibit A—Findings of Fact, Conclusions of Law and Order of United States District Court for the Western District of Pennsylvania.

The following will constitute findings of fact and conclusions of law:

1. Plaintiffs are Robert Kagarise, Albert E. Mountain, and Pauline May, all individuals residing in the Western District of Pennsylvania.

Defendant is the Cumberland, Maryland Area Teamsters Pension Fund, which is an unincorporated association, duly constituted and organized as a pension fund and engaged in the business of providing pension benefits to various of its members, former members and their spouses.

2. Defendant is signatory to a certain written agreement known as the Reciprocal Agreement for Teamsters Pension Funds, which is marked as Plaintiffs' Exhibit 1, and it has been admitted as evidence.

The Reciprocal Agreement provides for partial pension benefits to those individuals whose years of employment are divided among two or more signatory funds.

Thus, although an individual employee may lack sufficient years of service with one employer to be eligible for a pension, the employee may be entitled to partial pension benefits under the Reciprocal Agreement from each of the signatory funds on a prorated basis.

3. Plaintiffs are each entitled to and are receiving partial pension benefits under the Reciprocal Agreement from the defendant. They have instituted the instant civil action, challenging the method of computation of these benefits by the Cumberland Fund. Plaintiffs assert that the present method of computation by the defendant violates the provisions of the pension plan as well

as the Reciprocal Agreement and that defendant's computation of benefits has resulted in receipt by each plaintiff of pension benefits in an amount which is less than that to which they are entitled.

4. The jurisdiction of this Court is predicated on the Employee Retirement Income Security Act of 1974, 29 USC Section 1001 et seq. Section 1132 of the Act grants federal question jurisdiction over all civil actions involving benefit plans covered by the statute. The coverage of the Act is defined as follows:

> "Except as provided in Subsection (b) of this Section and in Sections 1051, 1081, and 1101 of this Title, this subchapter shall apply to any employee benefit plan if it is established or maintained—
>
> "(1) by an employer engaged in commerce or in any industry or activity affecting commerce; or
>
> "(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or
>
> "(3) by both."

29 USC Section 1132(a).

We find that the defendant Cumberland Fund is a pension fund within the definition of the employee benefit plan and therefore subject to the provisions of the Act.

Furthermore, we find that the Cumberland Fund does not fall within any of the categories which are excluded under Section 1132(b) or any other exclusion of the Act.

Therefore, jurisdiction is extant.

Appendix—Exhibit A—Findings of Fact, Conclusions of Law and Order of United States District Court for the Western District of Pennsylvania.

5. This is a civil action for equitable relief and damages, instituted by plaintiffs to redress the alleged deprivation of rights secured by the Act. Such legal and equitable relief may be had under 29 USC Section 1132(a).

6. The Reciprocal Agreement was adopted by the Cumberland Fund on April 1, 1968.

According to the undisputed testimony of Frank Stokes, an actuary employed by defendant at all relevant times, the Cumberland Fund calculated partial pension benefits from 1968 until 1972 on the basis of the unit multiplier in effect at the time the employee transferred from the defendant Fund to another pension fund.

The evidence also establishes that no applications for partial benefits were actually processed under the Reciprocal Agreement prior to 1972 by the Cumberland Fund.

7. In 1972, the Trustees of the Cumberland Fund adopted a change in the unit multiplier. At that time the Fund began calculating partial pension benefits based on the unit multiplier in effect at the time the employee filed an application for retirement benefits. Under this method of calculation, the amount paid to a pensioner for a partial pension was increased.

8. In July of 1978, the Trustees of the Cumberland Fund voted to change the method of calculating partial pension benefits. The defendant Fund determined to calculate partial pension benefits based on the benefit level in effect at the time the employee terminated participation with the Cumberland Fund.

According to the testimony of defendant's actuary, Mr. Frank Stokes, and other witnesses which we find credible, the change was adopted by the Trustees following a study of the Fund's potential liability for partial benefits which indicated that liabilities would exceed contributions by over $200,000 and the Fund would likely become insolvent within a short period of time.

This calculation was based upon the fact that the contributions of the employers on behalf of an employee member are based upon rates which exist when an employee is a member of the Fund.

9. Plaintiffs claim that Section 8 of the Reciprocal Agreement requires that pension benefits be computed as of the time an employee files for retirement benefits and therefore the act of the Trustees in changing the computation method is contrary to the Reciprocal Agreement and federal law.

10. Section 8 of the Reciprocal Agreement, which is identical to Article X, Section 10.08 of the pension plan of 1976, provides as follows:

> "The amount of the Partial Pension shall be determined as follows:
>
> "(a) The amount of the pension to which the employee would be entitled under this Plan taking into account his Combined Service Credit shall be determined, when
>
> "(b) The amount of service credit earned with this Plan since January 1, 1955, shall be divided by the total amount of Combined Service Credit earned by the employee since January 1, 1955, then

"(c) The fraction so determined in (b) shall be multiplied by the pension amount determined in (a) and the results shall be the Partial Pension amount payable by this Plan."

Plaintiffs urge that the present method of calculation by the Cumberland Fund transgresses Section 8 of the Reciprocal Agreement.

11. Plaintiffs also contend that the Reciprocal Agreement includes two pages of calculation sheets which were prepared and distributed at the same time as the Reciprocal Agreement. These calculation sheets are marked as Plaintiffs' Exhibit No. 9, and they have been received as evidence.

The examples set forth in this exhibit, plaintiffs argue, employ the unit multiplier in effect at the time of retirement rather than the unit multiplier in effect at the time an individual terminates participation with the Cumberland Fund.

This is further evidence, plaintiffs insist, that the Cumberland Fund is required to employ the unit multiplier in effect at the time of retirement by a claimant.

12. We find that the Trustees of the defendant Fund in July of 1978 voted to return to calculating partial pension benefits based on the unit multiplier in effect at the time that an individual terminated participation with the Cumberland Fund. This change was based on a good faith belief and prudent judgment that the Fund would become insolvent if it continued to employ the unit multiplier in effect at the time of individual retirement.

Appendix—Exhibit A—Findings of Fact, Conclusions of Law and Order of United States District Court for the Western District of Pennsylvania.

We find credible that a study conducted by Frank Stokes and others indicated the existence of at least 188 individuals who could demand partial pensions under the Reciprocal Agreement from defendant, with potential claims of over $1 million. These claims threaten to exceed the Fund's assets by $200,000, for when calculations are based upon the unit multiplier in effect at the time an individual retires, such as from 1972 to 1978, a recipient receives a certain amount of free benefits, that is, benefits for which no contributions have been received by a Fund.

Mr. Frank Stokes concluded that either the unit multiplier had to be changed or the Fund would become insolvent, particularly because of the substantial reduction in current employer contributions due to mergers, relocations, bankruptcies, and other adverse economic conditions of the contributors to the Fund.

13. We conclude that this change in the method of calculating partial benefits was not violative of the Reciprocal Agreement.

We are unable to find any language in Section 8 of the Reciprocal Agreement which prescribes the unit multiplier which a signatory Fund must employ in calculating partial pension benefits.

Section 8(a) states only that the amount of the partial pension benefits "shall be determined" by taking into account the individual's combined service credit. It does not state whether the partial pension benefit shall be determined at the time of retirement and application is made or at the time an individual leaves the Cumberland Fund.

Appendix—Exhibit A—Findings of Fact, Conclusions of Law and Order of United States District Court for the Western District of Pennsylvania.

We conclude that Section 8 of the Reciprocal Agreement is silent as to the unit multiplier to be employed by a signatory and therefore the change made by the Trustees is not proscribed by Section 8.

14. We turn next to the calculation sheets which are marked as Plaintiffs' Exhibit 9.

There is testimony of record by Jack Frazier, President of Local 261, that these two pages were attached to the back of each Reciprocal Agreement when that agreement was originally distributed to members.

There is also testimony of record by Frank Stokes, however, that these two pages were distributed at a seminar to explain the Reciprocal Agreement at the time the agreement was drafted. He stated that the calculation sheets were not attached to or part of the Reciprocal Agreement at that time.

We conclude that although the calculation sheets may have been stapled to the Reciprocal Agreement in some cases, they were never intended to be part of that agreement. They represented a somewhat informal attempt to summarize the key points of the Reciprocal Agreement as well as some examples as to the method of calculation of partial pension benefits.

15. More significantly, we conclude that the calculation sheets marked as Plaintiffs' Exhibit 9 do not indicate that any particular unit multiplier must be employed by a signatory Fund.

Even if the examples are calculated with a unit multiplier in effect when an individual retires and applies for benefits, there is no indication that the Cumberland Fund is obligated or committed to such a multiplier.

Appendix—Exhibit A—Findings of Fact, Conclusions of Law and Order of United States District Court for the Western District of Pennsylvania.

We find no evidence of contract, as alleged by Mr. Pasquarelli in closing argument.

We note, moreover, that paragraph (4) of Exhibit 9 states that, "Each Fund calculates—on its own—the benefit the employee would have received in accordance with its own rules and benefit formulas *if* all the combined credited service had been with its Fund."

This indicates and we find that the method of calculation is established according to the rules and benefit formulae of each particular Fund.

As a result, we find that there is nothing in the Reciprocal Agreement which prohibited a change in the unit multiplier by the Trustees of the Cumberland Fund.

16. The trust agreement in effect during the period in question, which is marked as Defendant's Exhibit F, gave the Trustees broad discretion to formulate a pension plan and amend it as prudence dictated.

17. Section 2.04 of the Agreement and Declaration of Trust of 1976 provides as follows:

> "The Trustees shall formulate a written plan for the payment of such retirement pension benefits, and death benefits and survivors benefits as they deem feasible. Said Trustees shall establish a funding policy which may be amended from time to time."

18. Section 2.05 of the Trust Agreement provides:

> "The Pension Plan may be amended by the Trustees from time to time as they in their discretion may determine, but all such amendments shall be specified in writing by the Trustees and filed as part of the records and minutes of the Trustees."

See, also, Section 8.01 of the Pension Plan of 1976, which allows the Trustees to amend the plan as they see fit.

We conclude that these provisions provide ample basis for the Trustees to amend the method of calculating partial pensions, so long as any such amendment comports with the fiduciary obligations owed to all members of the Cumberland Fund.

19. The fiduciary duties of a Trustee of a pension plan to the participants and beneficiaries are set forth at 29 USC Section 1104.

There is no evidence here and indeed no allegation that the Trustees of the Cumberland Fund breached any fiduciary duty in deciding to change the method of calculating partial pensions in July of 1978.

We find their actions to be sound, prudent and consistent with the obligations imposed upon a fiduciary.

20. We conclude that the plaintiffs have failed to establish that the present method which the Cumberland Fund employs to calculate partial pension benefits violates the pension plan, the Reciprocal Agreement, Exhibit 9, or federal law.

And finally, since there were a number of persons who were interested in this matter, — many of whom did not appear today, I would add, — we are aware that many employees have worked for a pension and contributions have been made to the Cumberland Fund in order to provide a respectable pension for the members.

We are also aware that many employees apparently are dissatisfied that the Fund has found it necessary to modify the method for calculating partial pension benefits, especially when this change translates into a reduction in a benefit on a monthly basis.

However, if the pension fund is to survive so that others may receive a means of support after retirement and that the pension benefits may be paid on a continuing basis, changes and sacrifices are often necessary.

As a result, judgment will be entered on behalf of the Cumberland, Maryland Area Teamsters Pension Fund and against the plaintiffs, Robert Kagarise, Albert E. Mountain and Pauline May, and a written judgment order will follow.

Appendix—Exhibit A—Findings of Fact, Conclusions of Law and Order of United States District Court for the Western District of Pennsylvania.

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT KAGARISE, ALBERT E. MOUNTAIN and PAULINE MAY, individuals, individually and on behalf of all other persons similarly situated,

Plaintiffs,

vs.

CUMBERLAND, MARYLAND AREA TEAMSTERS PENSION FUND,
an unincorporated association,

Defendant.

Civil Action No. 79-1037.

ORDER OF COURT

AND NOW, this 27th day of January, 1981, in accordance with the findings of fact and conclusions of law of record,

IT IS ORDERED that judgment be and hereby is entered on behalf of defendant, Cumberland Area Teamsters Pension Fund, and against plaintiffs, Robert Kagarise, Albert E. Mountain and Pauline May.

DONALD E. ZIEGLER
Donald E. Ziegler
United States District Judge